

# HOUSE BILL REPORT

## SB 5070

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### As Reported by House Committee On: Public Safety

**Title:** An act relating to the supervision of domestic violence offenders.

**Brief Description:** Requiring the department of corrections to supervise domestic violence offenders who have a conviction and were sentenced for a domestic violence felony offense that was plead and proven.

**Sponsors:** Senators Pearson, Warnick, Dammeier, Kohl-Welles and Brown.

#### **Brief History:**

##### **Committee Activity:**

Public Safety: 3/25/15, 3/26/15 [DPA].

#### **Brief Summary of Bill (As Amended by Committee)**

- Require the Department of Corrections to supervise an offender, regardless of risk classification, if the offender has a conviction for a domestic violence felony offense where domestic violence was plead and proven.
- Provides that the state and its officers, agents, and employees may not be held criminally or civilly liable for its supervision of an offender under the act unless the state and its officers, agents, and employees acted with gross negligence.

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### HOUSE COMMITTEE ON PUBLIC SAFETY

**Majority Report:** Do pass as amended. Signed by 9 members: Representatives Goodman, Chair; Orwall, Vice Chair; Klippert, Ranking Minority Member; Hayes, Assistant Ranking Minority Member; Appleton, Griffey, Moscoso, Pettigrew and Wilson.

**Staff:** Cassie Jones (786-7303).

#### **Background:**

Community Supervision.

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*This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.*

The Department of Corrections (DOC) is required to supervise an offender sentenced to community custody regardless of the person's risk classification if the offender:

- has a current conviction for a sex offense or a serious violent offense;
- has been identified by the DOC as a dangerous mentally ill offender;
- has an indeterminate sentence and is subject to parole;
- has a current conviction for failure to register; or
- has a current conviction for a domestic violence felony offense where domestic violence was plead and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence or domestic violence felony offense where domestic violence was plead and proven after August 1, 2011.

A "repetitive domestic violence offense" means any:

- domestic violence assault that is not a felony;
- domestic violence violation of a no-contact order that is not a felony;
- domestic violence protection order that is not a felony;
- domestic violence harassment that is not a felony;
- domestic violence stalking that is not a felony; and
- any federal, out-of-state, tribal court, military, county, or municipal conviction for an offense that under Washington law would be classified as one of the above.

#### State Tort Liability.

The State of Washington waived its sovereign immunity in 1961; therefore, the state is liable for damages arising out its tortious conduct to the same extent as if it were a private person or corporation. The Washington State Supreme Court has held that the state has a duty to take reasonable precautions to protect against reasonably foreseeable dangers posed by offenders released from confinement and subject to community supervision by the DOC. Therefore, a plaintiff who has incurred damages as a result of the actions of a supervised offender may sue the DOC for its negligent supervision of the offender. When a plaintiff who was determined to have no share of the fault prevails on a claim of negligent supervision, the DOC is liable for 100 percent of the damages regardless of its degree of fault.

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#### **Summary of Amended Bill:**

##### Community Supervision.

For crimes committed prior to the effective date of the act, current law remains the same with respect to the DOC's duty to supervise an offender sentenced to community custody regardless of risk classification when the offender has a current conviction for a domestic violence felony offense where domestic violence was plead and proven after August 1, 2011, and a prior conviction for a repetitive domestic violence or domestic violence felony offense where domestic violence was plead and proven after August 1, 2011.

For crimes committed after the effective date of the act, the DOC is required to supervise an offender sentenced to community custody regardless of risk classification when the offender has a conviction for a domestic violence felony offense where domestic violence was plead and proven.

State Tort Liability.

The state and its officers, agents, and employees may not be held criminally or civilly liable for its supervision of an offender under the act unless the state and its officers, agents, and employees acted with gross negligence.

**Amended Bill Compared to Original Bill:**

The amended bill provides that the state and its officers, agents, and employees may not be held criminally or civilly liable for its supervision of an offender under the act unless the state and its officers, agents, and employees acted with gross negligence rather than reckless disregard.

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**Appropriation:** None.

**Fiscal Note:** Available.

**Effective Date of Amended Bill:** The bill takes effect 90 days after adjournment of the session in which the bill is passed.

**Staff Summary of Public Testimony:**

(In support) This bill was brought forward by a victim of domestic violence and community corrections officers. There are horrific domestic violence cases that are first offenses and the offenders are not supervised upon release. It is often the case that by the time a person has been convicted of a first domestic violence offense, that person has committed prior domestic violence offenses that were never prosecuted. One victim of domestic violence found herself suffering abuse from being in an abusive relationship. Her boyfriend had a prior history of domestic violence in a previous relationship to another victim, though he had never been prosecuted. When he was finally prosecuted for his first offense, there were many other offenses not prosecuted that occurred over the previous 10 months. Many domestic violence victims do not report the prior offenses in order to protect the abuser. This bill will help hold these offenders accountable by requiring them to be supervised in the community. This bill shows the cost of past reductions in community supervision. This bill rectifies the problem that many domestic violence offenders do not score high enough in a risk assessment to qualify for supervision.

(In support with amendments(s)) The stories of the victims make it clear that offenders who pose the greatest risk should be supervised. A fundamental part of that is a remedy for victims and accountability if there is a failure of supervision. Gross negligence is when virtually no care is exercised. Victims of offenders deserve a higher protection than that. Negligence is a better standard.

(Opposed) None.

**Persons Testifying:** (In support) Senator Pearson, prime sponsor; Barbara Holland; Scott Klingler; and Matt Zuvich, Washington Federation of State Employees.

(In support with amendment(s)) Larry Shannon, Washington State Association for Justice.

**Persons Signed In To Testify But Not Testifying:** None.